



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASCENT REAL ESTATE MANAGEMENT CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") to end the tenancy early and obtain an Order of Possession. The Landlord also applied to recover the filing fee from the Tenant for the cost of the Application.

An agent for the Landlord and a witness appeared for the hearing, both of whom provided affirmed testimony during the hearing. The Landlord also provided written evidence prior to the hearing.

There was no appearance by the Tenant during the 18 minute duration of the hearing or any submission of written evidence prior to the hearing.

As the Tenant failed to appear for the hearing, I turned my mind to the service of the Application and Notice of Hearing documents (the "hearing package"). The Landlord's agent testified that the hearing package and a copy of the written evidence was served to the Tenant by registered mail on June 11, 2014 pursuant to section 89(1)(c) of the *Residential Tenancy Act* (the "Act"). The Landlord provided the Canada Post tracking number as evidence for this method of service.

Section 90(a) of the Act states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failure or neglect to pick up mail and this cannot form the basis of a review application. Based on the deeming provisions of the Act and the Landlord's agent's written and verbal evidence, I find that the Tenant was served with the hearing package by the Landlord in accordance with the Act.

In the absence of any evidence provided by the Tenant, the Landlord's evidence presented during the hearing was carefully considered in this decision.

Issue(s) to be Decided

Is the Landlord entitled to end the tenancy early and obtain an Order of Possession?

Background and Evidence

The Landlord's agent confirmed the following details on the written tenancy agreement; that this tenancy started on March 1, 2014 for a fixed term of one year. The Tenant paid \$875.00 as a security deposit at the start of the tenancy which the Landlord still retains. Rent is currently payable by the Tenant in the amount of \$1,750.00 on the first day of each month. The Landlord's agent provided the following testimony during the hearing.

Since the tenancy began the Tenant has engaged in a course of action that has caused disturbance to other residents in the building for which the Tenant has received four warning/breach letters from the strata council; these were provided as evidence for this hearing. The Tenant did not heed these warning letters and as a result, the Landlord was fined \$200.00 each time for a total of \$800.00; this was in relation to excessive noise into the early hours of the morning, smoking and having his pet off leash around the common areas of the building, and storing items in his car parking stall. All of these are in contravention of the strata bylaws and the tenancy agreement specifically states that the building is a non smoking premises. The Landlord provided copies of the bylaw infractions and the resulting fines issued to the owner of the unit.

The Landlord fears that if the Tenant remains in the rental suite any longer, there will be further infractions of the bylaws, further disturbances, and the fines against the owner will continue to increase.

When the Tenant was confronted about having a pet by the Landlord's agent, which was also contrary to the written tenancy agreement, the Tenant stated that the claims were false and denied having a dog. As a result, the Landlord's agent and the witness for this hearing conducted an inspection of the unit on June 5, 2014, after written notice was given to the Tenant.

On inspection of the rental unit, the Landlord's agent discovered a large amount of garbage bags and beer bottles which was causing a foul stench in the rental suite. The Landlord's agent also saw a bag of marijuana as well as used needles and syringes. The Tenant had also been keeping a six foot caged snake inside the rental suite and the Landlord's agent testified that the keeping of such reptiles was also against the strata by laws. The Landlord's agent also noticed a dog bed and evidence of dirty

carpets from the pets, and a mountain biked housed in the one of the bedrooms on the carpet. This testimony was supported by photographic evidence.

The Landlord's agent testified that the state of the rental suite is likely to cause significant damage to the rental unit and the stench of the garbage is going to increase and cause disturbance to other occupants of the building. The Landlord's agent testified that the Tenant was served with a 1 Month Notice to End Tenancy for Cause in relation to the bylaw infarctions as well as a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; a hearing has been scheduled for these notices in July, 2014.

Analysis

An early end of tenancy is an expedited and unusual remedy under the Act and is only available to the Landlord when the circumstances of the tenancy are such that it is unreasonable for a Landlord to wait for the effective date of a notice to end tenancy to take effect, such as a notice given under Section 47 of the Act for cause. Section 56(2) of the Act details the circumstances under which an arbitrator may end the tenancy early as follows:

The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

(iii) put the landlord's property at significant risk;

(iv) engaged in illegal activity that

(A) has caused or is likely to cause damage to the landlord's property,

(B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(v) caused extraordinary damage to the residential property, and

(b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

I am satisfied on the balance of probabilities by the undisputed evidence presented by the Landlord's agent, as well as the written and photographic evidence, that the Tenant has put the Landlord's property at significant risk and caused damage to the rental suite through the accumulation of excessive amounts of garbage which is likely to create a disturbance in the building. I am also satisfied that there is a likelihood that the Landlord will continue to incur financial loss from strata fines if the Tenant is allowed to remain on the premises until a notice to end tenancy is to take effect.

I am also satisfied that the by having a reptile and a dog inside the rental suite, which is contrary to the written tenancy agreement and the strata bylaws, this will likely adversely affect the quiet enjoyment, safety and physical well being of other residents in the building and cause unreasonable disturbance.

I accept the Landlord's evidence and I find that it would be unfair for the Landlord to wait for the effective date of the notices to end tenancy already issued to the Tenant, and that the tenancy should end early. Therefore the Landlord is entitled to an Order of Possession effective two days after service on the Tenant, pursuant to section 56(1)(b) of the Act.

Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession effective **two days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court.

As the Landlord has been successful in this Application, the Landlord is entitled to the cost of filing fee. In order to obtain this amount, I order the Landlord to retain \$50.00 from the Tenant's security deposit, pursuant to Section 72(2)(b) of the Act

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 23, 2014

Residential Tenancy Branch

